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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter of	IB Docket No. 95-22
MARKET ENTRY AND REGULATION OF FOREIGN-AFFILIATED ENTITIES	RM-8355 RM-8392

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits its comments on the "Section 214 Standard for International Facilities-based Entry by Foreign Carriers" proposed by the Commission in the Notice of Proposed Rule Making, FCC 95-53 ("NPRM"), released February 7, 1995 in the captioned proceeding. TRA supports the Commissions laudable efforts to (i) promote effective competition in the global market for communications services, (ii) prevent anticompetitive conduct in the provision of international services or facilities, and (iii) encourage foreign governments to open their communications markets. In furtherance of these efforts and in particular to prompt greater foreign market liberalization, TRA urges the Commission to incorporate into its Section 214 entry standard as a primary, if not dispositive, requirement, the requirement that each foreign carrier seeking a facilities-based authorization demonstrate that meaningful resale opportunities are available in its primary market for U.S. carriers.

I.

INTRODUCTION

TRA is an association created to foster and promote the interests of entities engaged in the resale of domestic interexchange and international telecommunications services. Employing the transmission, and often the switching, capabilities of underlying facilities-based network providers, the resale carriers comprising TRA create "virtual networks" to serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to long distance rates otherwise available only to much larger users. TRA resale carrier members also offer small and mid-sized commercial and residential customers enhanced, value-added products and services, as well as personalized customer support functions, that are generally not provided to low volume users. Indeed, many TRA resale carrier members are full service providers of seamlessly integrated communications solutions, providing small and mid-sized businesses with a wide array of integrated voice and data telecommunications services, as well as sophisticated customer-oriented billing.

TRA's members -- more than 300 resale carriers and their underlying service and product suppliers[1/] -- range from emerging, high-growth companies to well-established, publicly-traded corporations. They represent by far and away the fastest growing sector of the long distance industry. The long distance resale community is already populated by more than 1,000 carriers, currently serves hundreds of thousands of customers, representing tens of billions of minutes of long distance traffic, and generates annual revenues in the billions of dollars. The

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[1/] TRA also numbers among its members facilities-based interexchange carriers, Regional Bell Operating Companies, competitive access providers, and cellular carriers and resellers.

market share of the long distance resale industry is nonetheless forecast to double in size by the end of the century.

TRA was chartered, among other things, to represent the views of its members before the Commission, other federal and state regulatory agencies and departments, legislative bodies and federal and state courts. Given that a large percentage of TRA's members provide international telecommunications services and that a significant number either currently conduct business or are exploring opportunities overseas, TRA is filing comments here in furtherance of that mandate.

II.

ARGUMENT

TRA supports the three basic goals the Commission seeks to achieve in this rulemaking proceeding. NPRM at ¶¶ 26-34. As the product of a decade of pro-competitive initiatives undertaken by the Commission, TRA and its resale carrier members applaud the Commission's efforts to promote effective competition in the global telecommunications market. As the NPRM (at ¶ 27) recognizes, worldwide competition will produce lower rates, enhanced service quality, increased efficiency and accelerated product innovation. TRA members agree with the Commission that in order to achieve a competitive global telecommunications market, foreign carriers must be prevented from engaging in anticompetitive conduct through exploitation of market power in their home markets. NPRM at ¶¶ 28-30. To this end, TRA members support the Commission's efforts to prompt the implementation and enforcement of effective competitive safeguards around the world. And TRA members wholeheartedly agree that foreign market liberalization is a prerequisite to the achievement of global competition. NPRM at ¶¶

31-32. As the Commission has recognized, barriers to competitive entry within a given country not only deny the citizens of that country the benefits of competition, but adversely impact U.S. carriers, U.S. businesses and U.S. citizens, as well as the global market as a whole

TRA also supports the Commission's proposal to utilize the access to U.S. markets made available to foreign carriers through Section 214 authorizations as a tool to promote effective competition in the global telecommunications marketplace. NPRM at ¶¶ 33-34. TRA agrees with the Commission that incorporation of some form of market access standard into the Commission's public interest analysis of foreign carrier applications for Section 214 authority would encourage other countries to open their telecommunications markets to U.S. carriers and to implement and enforce safeguards against anticompetitive conduct by existent providers.

The Commission has proposed an "effective market access" standard for entry into the U.S. international facilities-based services market by foreign carriers, pursuant to which foreign carrier applicant would be required to demonstrate that U.S. carriers have, or will have in the near future, effective access to the primary international telecommunications markets served by the foreign carrier applicant. NPRM at ¶¶ 38-40. The Commission would also continue to consider such public interest factors as national security, the openness of other telecommunications segments of the foreign carrier's primary market, and the ability and incentive of the foreign carrier to discriminate against unaffiliated U.S. carriers. "Effective market access" would be defined as the ability of U.S. carriers to provide basic, international telecommunications facilities-based services in the markets in which the foreign carrier applicant has a significant facilities-based presence. In determining whether "effective market access" exists, the Commission would consider (i) the ability of U.S. carriers to offer comparable

international facilities-based service, (ii) the existence of competitive safeguards, (iii) the availability of nondiscriminatory interconnection for origination and termination of international services, (iv) the imposition of network disclosure requirements and customer proprietary network information protections, and (v) the presence of a fair and independent regulatory authority charged with enforcing these competitive safeguards.

In proposing the above "effective market access" standard, the Commission rejected AT&T Corp.'s ("AT&T") recommendation that a "comparable market access" test be adopted. AT&T's "comparable market access" standard would require a showing that competitive opportunities for U.S. carriers in a foreign carrier applicant's home market were comparable to those available to the foreign carrier in this country. In rejecting the AT&T proposal, the Commission expressed concern that the standard was so strict that it might be impossible to meet and so inflexible that it might prove counterproductive.

TRA does not disagree with the Commission that whatever entry test is adopted must be realistic and designed to achieve the goals articulated in the NPRM. Thus, TRA does not challenge the Commission's rejection of the AT&T "comparable market access" standard or oppose the "effective market access" standard proposed by the Commission. Indeed, TRA recommends but one enhancement of the latter, drawn in part from the former. As noted above, the Commission has noted that it will consider as part of its secondary public interest analysis "the state of liberalization in the foreign carrier's domestic market and the availability of other market access opportunities for U.S. carriers." NPRM at ¶¶ 40, 45. Drawing upon this element of the Commission's "effective market access test," TRA recommends that the availability of

meaningful resale opportunities for U.S. carriers in the foreign carrier applicants' primary markets be elevated to a primary, and perhaps, dispositive, factor.

As the Commission has recently reaffirmed, resale of telecommunications services generates "numerous public benefits," chief among which are the downward pressure resale exerts on long distance rates and charges and the enhancements resale produces in the diversity and quality of long distance service offerings.[2/] As described by the Commission:

> In the fifteen years since we ordered unlimited resale . . . , resale has substantially increased competition in the U.S. domestic telecommunications market and has yielded public benefits in terms of increased demand and reduced prices for most telecommunications services, and has virtually eliminated the possibility of price discrimination.[3/]

And with respect to the international telecommunications arena, the Commission has repeatedly concluded that resale will not only produce comparable public benefits, but will "exert[] pressure to reduce above-cost international accounting rates for switched services.[4/] Indeed, the Commission has noted that the "benefits associated with [the] increased competition [engendered by the resale of international switched voice services is] . . . in line with the Commission's statutory mandate to establish a rapid, efficient, nationwide, and worldwide wire and radio

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[2/] AT&T Communications: Apparent Liability for Forfeiture and Order to Show Cause, FCC 94-359, ¶12 (January 4, 1995) (citing Resale and Shared Use of Common Carrier Services, 60 F.C.C.2d 261 (1976) ("Resale and Shared Use Order"), recon. 62 F.C.C.2d 588 (1977), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Services, 83 F.C.C.2d 167 (1980), recon. 86 F.C.C.2d 820 (1981)) ("AT&T Forfeiture Order").

[3/] Regulation of International Accounting Rates, 7 FCC Rcd. 559, ¶ 8 (1991), recon., 7 FCC Rcd 7927 (1992).

[4/] Id.; VISA USA, Ltd., 9 FCC Rcd. 2288, ¶ 11 (1994), recon. pending (the "International Call-Back Order").

communication service."[5/] Even the NPRM (at ¶ 73) makes reference to the "vigorous and significant competition among international resellers" and the "significant benefits to users" that it provides.

TRA is sensitive to the Commission's concerns that whatever entry test is selected must not be so onerous that it is impossible to satisfy. NPRM at ¶41. A standard which cannot be met will not, as the Commission notes, encourage open markets. Moreover, TRA is cognizant of the potential for retaliation by foreign governments if the entry test is too restrictive. On the other hand, if market liberalization is to be a serious goal of the Section 214 entry standard for foreign carriers seeking facilities-based authorizations, some effort must be made to incent foreign governments to introduce competition. A resale requirement is an obvious middle ground.

Adoption and implementation of meaningful resale opportunities for U.S. carriers is certainly doable for foreign governments. Such an approach requires substantially less restructuring of legal and regulatory apparatus, as well as network facilities, than would AT&T's "comparable market access" test with its "mirror reciprocity standard." Particularly if the resale is "non-facilities based," many of the thornier technical issues, such as interconnection and equal access, need not be confronted, much less implemented, immediately. Meaningful resale opportunities could be provided quickly, efficiently and without undue cost, given the limited need for infrastructure development and change. And if the resale opportunities are meaningful, a resale requirement could have an almost immediate competitive impact because resellers can initiate operations without lengthy construction lags.

[5/] International Call-Back Order, 9 FCC Rcd. 2288 at ¶ 11.

Under the Commission's "effective market access" test, resale requirements are one of several subcomponents of one of a number of public interest factors. Accordingly, the "effective market access" test does not, as suggested by the NPRM (at ¶ 49), address TRA's, much less AT&T's, concerns about incenting foreign governments to open their telecommunications markets to competition. TRA's approach, however, not only addresses, at least in part, AT&T's concerns, it meets the concerns of those carriers who fear retaliation because it is a manageable requirement. Moreover, because it is merely an incremental step toward full competition, the U.S. government cannot be accused of overreaching in requiring it as a tradeoff for U.S. market entry.

TRA submits that the Commission has ample authority to condition grants of authority under Section 214 to promote a competitive global telecommunications market and in particular to require a demonstration of meaningful resale opportunities for U.S. carriers in a foreign carrier applicant's home country. Section 214 itself empowers the Commission to "attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require." 47 U.S.C. § 214. Section 1 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 151, requires the FCC to "make available . . . to all the people of the United State a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." And Section 4(i) or the Act empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i).

The courts have recognized that the authority granted the Commission by Section 214 should be construed in light of Section 1 and amplified by Section 4(i). General Telephone Company of the Southwest v. U.S., 449 F.2d 846 (5th Cir. 1991). In General Telephone, the United States Court of Appeals for the Fifth Circuit concluded that the Commission had properly used its Section 214 authority to address concerns regarding abuse of market power to impede competition. The United States Court of Appeals for the District of Columbia Circuit found that the Commission had authority under Section 214 to restrict the services a carrier could provide. MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (D.C.Cir. 1977). And, of course, the Commission has imposed a variety of conditions on international Section 214 grants to address concerns regarding potential abuse of market power by foreign carriers.[6/]

The Commission can and should require all foreign carriers seeking a facilities-based authorization under Section 214 to demonstrate that meaningful resale opportunities are available for U.S. carriers in their respective primary markets.

[6/] See, e.g., Atlantic Tele-Network, Inc., 9 FCC Rcd. 3993 (1993); Telefonica Larga Distancia de Puerto Rico, 8 FCC Rcd. 106 (1992); fonorola Corporation, 7 FCC Rcd. 7312 (1992), recon., 9 FCC Rcd. 4066 (1994).

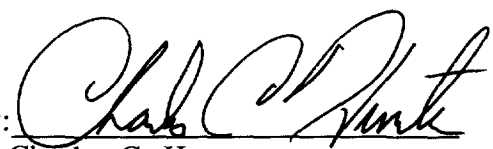
III.

CONCLUSION

By reason of the foregoing, TRA urges the Commission to revised the rules proposed in the NPRM in a manner consistent with the foregoing comments.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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